

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 8107 of 2014

IN THE MATTER OF:

An application under Article 102 (2) (a) (1) of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Dhaka District Judgeship Ministerial Karmachari Kalyan Samity, represented by its General Secretary-Md. Golam Mustafa, Dhaka Judge Court, Police Station-Kotwali, District-Dhaka

....Petitioner

Versus

Government of People's Republic of Bangladesh, represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Police Station- Ramna, District-Dhaka and others

....Respondents

Mr. J.K. Paul, Advocate

....For the Petitioner

Mr. Md. Hafizur Rahman, AAG with

Mr. Md. Ali Akbor Khan, AAG,

Mr. Elin Imon Saha, AAG and

Mr. Ziaul Hakim, AAG

.... For the respondent

Mrs. Hosneara Begum, Advocate

.....For the Respondent No. 6

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 28.07.2024.

Md. Iqbal Kabir, J:

This Rule Nisi was issued calling upon the respondents to show cause as to why the office memo No. DMSJ/36/2(N) dated 18.08.2014 (Annexure-E) issued by the respondent No. 6 and office memo being No. 3866 dated 01.09.2014 issued by respondent No. 8 shall not be declared to have been made and passed without any lawful authority and is of no

legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts stated in this application are that the petitioner obtained the lease of a space from Respondent No. 5 to run/setup a restaurant namely Mitali Canteen. The space is located at the northern side of the southeast gate of the large Courtyard and after the gate at the south side of the new building commonly known as the Metropolitan Sessions Court Building. Petitioner erected a Tinshed semi-pucca structure therein for the function of Mitali Canteen. The petitioner has been paying rent each and every year as determined by respondent No. 5. However, a letter being memo DMSJ/36/2(N) dated 18-08-2014 (Annexure-E) was issued to take the initiative for evicting the illegal establishments adjoining Metropolitan Sessions Judge Bhaban and also nearby places, by the same memo, it was further requested to disconnect the WASA Line, Electricity Connection etc. Therefore, respondent No. 8 by a letter dated 01-09-2014 (Annexure-H) requested the petitioner to remove all materials within 05-09-2014, failing which Authority will take the initiative to remove the establishment along with all materials.

Being aggrieved petitioner brought this application before this Court and obtained the present Rule and order of stay.

It is pertinent to note that this is a long pending Rule; the Hon'ble Chief Justice has sent this matter to this Court for disposal, and pursuant to the order dated 01-07-2024, this matter has been fixed for hearing.

Mr. J.K. Paul, the learned Advocate for the petitioner submits that administrative control of the Dhaka District Court premises including all the establishments was vested upon respondent No. 5 who subsequently by a letter dated 30-08-2012 transferred the administrative control of the Metropolitan Sessions Judge Building to the Metropolitan Sessions Judge for proper management and handed over the same. According to him beyond the administration of the Metropolitan Session Judge Building, the Joint Metropolitan Sessions Judge has no authority to issue such a request letter (Annexure-E) thereby, taking the initiative to evict the petitioner.

By the submission he states an inquiry committee was constituted by the three judges who after inquiry made recommendations for its renewal, thus the eviction notice by the impugned order is illegal.

He also brings notice that Nazir of Dhaka District Court made an inquiry as per the instruction of Respondent No.5. Report of the Nazir

clearly states that canteen namely Mitali canteen is running on payment of all the utility charges against the legal utility line and has legal papers, Therefore, it is clear that the impugned memo has issued without lawful authority and the same is of no legal effect.

Mr. Md. Hafizur Rahman, the learned AAG brought to notice that this particular restaurant namely Mitali Canteen situated on the premises of Dhaka Judge Court area beside building No. 6. He claims according to the report of the police, location of the restaurant is not suitable. The restaurant is used as a meeting point for criminals, any time they can create any violence, thus it becoming a threat for the persons who are performing as a judicial officer of that Court and or the persons who are working as other officials and using the area in particular. The report shows for the safety/ security of the persons and to create the proper judicial working environment the Mitali Canteen has to be removed. He also brought notice that the Hon'ble Chief Justice of Bangladesh also expressed his concern, and it has been reflected in a letter dated 23-03-2017 and 12-10-2023 issued under the signature of Register, High Court Division. However, for our better understanding relevant part of the letter dated 12-10-2023 is reproduced herein below:

“... ”

২। দেশের ৪২ টি দেওয়ানী ও ২৫ টি ফৌজদারী চৌকি আদালতসমূহ শহর হতে দূরবর্তী উপজেলা পর্যায়ে অবস্থিত এবং চৌকি আদালতসমূহের বিচারকগণ অধিকাংশই চৌকি আদালতসমূহের চত্বরে সরকারী বাসভবন অবস্থান করেন। চৌকি আদালতসমূহে ও উক্ত আদালতসমূহের চত্বরে সরকারী বাসভবনে কোনো নিরাপত্তার ব্যবস্থা নেই। গত ২৬ এপ্রিল ২০২৩ খ্রি. তারিখে শরীয়তপুরে সদর উপজেলার চিকান্দি চৌকির জ্যেষ্ঠ সহকারী জজের সরকারি বাসভবনে দুর্বৃত্তরা হামলা করে, যা প্রিন্ট, ইলেকট্রনিক মিডিয়াসহ জাতীয় পত্রিকাগুলোতে প্রচারিত হয়েছে (সংযুক্তি-২)। নব্বইয়ের দশকে ঐ সরকারি বাসভবনে এক বিচারককে গুলি করে হত্যা করা হয়েছিল। বর্ণিত প্রেক্ষাপটে অধস্তন সকল দেওয়ানী ও ফৌজদারী চৌকি আদালতসমূহে কর্মরত বিচারক এবং তাঁদের এজলাস ও বাসভবনের সার্বিক নিরাপত্তা নিশ্চিত করা আবশ্যিক।”

In that respect, he also directed the law enforcement agency to take appropriate initiative for the safety and security of the Judicial Officers all over the Country.

Respondent by a letter dated 27.06.2024 requested Metropolitan Sessions Judge and expressed their concern and requested to take initiative to stop the operation of the canteen, the relevant part of the said letter is reproducing below:

“... ”

উর্পযুক্ত বিষয়ে আপনার সদয় অবগতির জন্য জানানো যাচ্ছে যে, জজ কোর্ট এলাকায় স্থাপিত অস্থায়ী ক্যান্টিনখানা বিচারকার্যে হাজির করা অপরাধীদের জন্য অত্যন্ত ঝুঁকিপূর্ণ।

ক্যান্টিনে অনেক লোকজনের সমাগত হওয়ায় বিচারাধীন অভিযুক্তদের প্রিজনার ভ্যান থেকে ওঠা-নামা করানোর সময় জটলার সৃষ্টি হয়। ক্যান্টিনে আশ্রয় নিয়ে অন্যান্য বহিরাগত অপরাধীরা বিচারাধীন অভিযুক্তদের ছিনিয়ে নেওয়া বা পালিয়ে যাওয়ার ব্যাপারে সহায়তা করতে পারে। তাছাড়া যেকোনো অপ্রীতিকর ঘটনা ঘটতে পারে। এহেন পরিস্থিতিতে ক্যান্টিনখানা চালু রাখা সমীচীন হবে না। ক্যান্টিনখানার ব্যাপারে ব্যবস্থা গ্রহণের জন্য এসআই মোঃ সাদেকুল ইসলাম, ইন-চার্জ, জজ কোর্ট হাজতখানা, প্রসিকিউশন বিভাগ, ঢাকা মেট্রোপলিটন পুলিশ, ঢাকা একটি প্রতিবেদন দাখিল করেছেন। তার স্বব্যখ্যায়িত প্রতিবেদনখানা অবগতির জন্য এতদসঙ্গে প্রেরণ করা হলো।”

From the combined reading of the above letters along with the impugned memo, it appears that the canteen in question is threatened and disturbing elements for the Judicial officers, including other people, and as a judicial workplace.

Respondent submits that the memo (Annexure-H) has been issued relying upon the memo Annexure-E, the content of the memo clearly states that the place where the Mitali Canteen is situated is very sensitive, the existence of such canteen is not suitable as well as threatened for the people who involved with judicial work. Law enforcement agencies are facing difficulties, to ensure the safety and security of judicial officers including people at large, the place has to be vacant. Thus the canteen has to be removed for the welfare of the people at large.

By way of his submission respondent brought notice to this Court that on 09.03.2011 last allotment was given and it was valid for the year i.e. till 31-12-2011. He claims that the lease period has expired long before, and no extension was made after the expiry of the tenure allotment has been canceled. Now the petitioner is an unlawful occupant, and being an unlawful occupant petitioner cannot challenge the illegality of the impugned memo.

We have perused the petition and considered the submissions made by the parties.

It has claimed that Dhaka District Judgeship Ministerial Karmachari Kalyan Samity (in short Samity) filed this writ petition being represented by its Secretary General. The affidavit has been sworn in by one Mr. Humayun Kabir as he has been authorized by Md. Golam Mustafa, General Secretary of the Samity. Mr. J. K. Paul the learned Advocate in his submission states Mr. Golam Mustafa being a General Secretary gave the letter of authority to Mr. Humayun Kabir to file this case. But, in support of his submission, no resolution or document was brought to this Court. He also failed to bring any Memorandum of Understanding, Article

of Association, or any constitution of the Samity, by which the General Secretary of the samity can delegate his power to file this case or swear affidavit through the letter of authority. There is no evidence that this samity was empowered and gave authority to Golam Mustafa to give power to Mr. Humayun Kabir to file this case in the name of the Samity.

It is pertinent to state that in the midst of the hearing, one Md. Abul Kalam Azad claiming himself as the present General Secretary of the Samity applied to substitute his name instead of the petitioner. However, in support of his application, he did not produce any such document shering that members of the samity authorized him to represent the samity. Thus, there is no scope to allow such application. Accordingly, the application is rejected.

However, it transpired to this Court that according to the letter dated 18-08-2014 (Annexure-E) respondent No. 8 issued a letter dated 09-09-2014 (Annexure-H). Thereby fixed the time and date to evict the petitioner. But, due to the interim order of this Court, the petitioners' canteen was not removed, thus, after elapsed of time the force of the impugned memo has been redundant.

It transpired that the petitioner in the name of the Samity obtained a lease/allotment of space from the District Judge Administration for restaurant business. The space is located at the northern side of the southeast gate of the large Courtyard and after the gate at the south side of the Metropolitan Session Court Building for running a restaurant business. The last allotment was granted by a letter dated 09-03-2011, by which allotment of the lease has been given for a year; the lease was valid for one year i.e., till 31-12-2011. The allotment letter in clear terms states that the tenure of the lease will be canceled automatically after the expiry of the period of one year. After the expiry of such tenure, no application for a fresh lease or allotment was made in favor of the petitioner. Moreover, the allotment letter clearly states after the expiry of the tenure mentioned in the allotment letter will be cancelled automatically.

Indeed, on perusal of the record, it appears that lastly it was allotted on 09.03.2011 for one year that period has expired long before. Thereafter, no allotment application was made, thus, after the expiry of one one-year tenure, on 31-12-2011 by operation of the allotment letter lease was canceled. Thus, the question of possession of immovable property and paying rent will not constitute a lease. The petitioner obtains

the right to use the property for a certain period. After the expiry of such period lessor respondent No. 5 has the authority to deal with the property and took possession of it. Thus, at this juncture, after the expiry of the tenure, the petitioner is an unlawful occupant; he possesses the premises unlawfully. The petitioner being an unlawful occupant cannot agitate his grievances and occupy the space in the name of lessee.

In light of the above, we are of the view, no merit and force in the submissions made by the learned Advocate for the petitioner.

Accordingly, the Rule is discharged.

The interim order granted at the time of issuance of the Ruel is hereby recalled and vacated.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:
I agree.